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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,820	04/04/2001	Eric J. Horvitz	MS150904.1	2915
27195 7590 01/07/2009 AMIN, TUROCY & CALVIN, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114				
EXAMINER SALTARELLI, DOMINIC D				
ART UNIT 2421		PAPER NUMBER		
NOTIFICATION DATE 01/07/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/825,820	<b>Applicant(s)</b> HORVITZ ET AL.
<b>Examiner</b> DOMINIC D. SALTARELLI	<b>Art Unit</b> 2421

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-7,9-18,32-34 and 53.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Dominic D Saltarelli/  
Examiner, Art Unit 2421

Continuation of 11, does NOT place the application in condition for allowance because: First, applicant argues the targeting of content to a known site (as Maissel teaches targeting content to particular televisions rather than particular users, col. 18, lines 58-64) is different than the claimed targeting of content to a likely subset of local users (applicant's remarks, pages 3-4). In response, the targeting of content to a particular site based upon viewing habits associated with that site is to infer a likely subset of local users. The likely subset are those unidentified individuals who most often view the television in question. There is no guarantee that the user or users of a television for any given time interval will be the user or users who most often watch the television, but they are the most likely individuals who will do so. For example, in a family household, viewing habits could be established by the members of the family, but there is always the possibility that other individuals could use the television, such as guests to the household. However, by targeting content to a particular site based on past viewing history, Maissel is inferring that the users who established said viewing history will be the ones to continue using the site in question.

Second, applicant argues that because Neal teaches searching a second data set if a search of a first set is inadequate (Neal, col. 6, lines 59-65), this does not correspond to the claimed broadening (or expanding) of a search to include additional time subintervals, but rather switching from one data set to another (applicant's remarks, page 5-6).

In response, it is unclear what applicant is attempting to argue as a difference between the search paradigm taught by Neal and the one claimed in the instant application. In the claimed invention, if a search is performed on a particular time interval, for example, from 6:00-8:00pm, and this is inadequate, then the time interval is then broadened to 6:00-10:00pm. The search is thus broadened to include the 8:00-10:00pm subinterval. The examiner fails to see how the paradigm taught by Neal, which is described as a search which is broadened to include the contents of a second catalogue if the search of a first catalogue is inadequate is any different than the above scenario, where a search is broadened to include a second time subinterval if the search of a first time subinterval is inadequate.

Lastly, applicant argues that the examiner engaged in improper hindsight in reconstructing applicant's invention (applicant's remarks, page 7).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Herz provides an explicit motivation for considering specific time subintervals in filtering schemes, as it is used for zeroing in on the most desirable content for users. Further, Neal also provides motivation for his searching paradigm, as it is an improvement which saves system resources from doing unnecessary searches and quickly finds the most relevant item (col. 3, lines 25-54) which can be used to similarly improve other types of searching.